

FEB 11 2008

FEDERAL ELECTION COMMISSION

**999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

**PRE-MURS: 448 AND 448R
DATE ACTIVATED: 11/14/07
EPS: 11/TIER: 3
EXPIRATION OF SOL: 11/8/07 – 6/20/12**

SOURCES:

(Seaway National Bank)

(Seaway Bancshares, Inc.)

RESPONDENTS:

Seaway National Bank and Seaway Bancshares, Inc.

RELEVANT STATUTES:

2 U.S.C. § 437f(c)
2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: _____

I. INTRODUCTION

_____ this matter as to Seaway
National Bank ("Seaway Bank" or the "Bank"), alleging that the Bank appeared to have made
campaign contributions from June 2000 to August 2002. _____

_____ In doing
research, ADR and OGC staff discovered that the Bank's holding company, Seaway Bancshares,
Inc. (the "holding company"), had likely made the _____ contributions as well as an additional
\$66,000 in state and local political contributions as recently as 2007. Because the _____

1 however, solely dealt with the Bank, ADR recommended that the Commission dismiss the matter
2 with admonishment.

3 At the October 23, 2007 Executive Session, the Commission declined to dismiss the
4 matter and instead decided to request information from the holding company based on the large
5 amount of contributions it had made in the last five years and the fact that under Advisory
6 Opinion 1981-61, those contributions could be illegal depending upon the source of the funds the
7 holding company used to make the contributions.

8 Thus, on October 30, 2007, we sent a "pre-RTB" letter to Seaway Bancshares advising it
9 of the Commission's information and inviting a response. After requesting a brief extension of
10 time, on November 27, Seaway Bancshares provided a response arguing, *inter alia*, that it was
11 unaware of the advisory opinion, and that the holding company is in compliance with Illinois
12 law, which permits corporations to make state and local political contributions. Seaway also
13 stated that, in fact, the holding company derived funds from two non-bank related transactions
14 that would cover the cost of the contributions it made.

15 As detailed in the analysis below, we recommend that the Commission open a MUR and
16 dismiss with admonishment.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Seaway National Bank**

19 The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any
20 national bank or a corporation organized by authority of any law of Congress to make a
21 contribution or expenditure in connection with any election to any political office. 2 U.S.C.
22 § 441b(a).

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1 Seaway National Bank is a federally chartered bank that was founded in 1965 in Chicago.
2 _____, the Bank made political contributions between June 2000 and
3 August 2002, in violation of the Act. The contributions _____ were made to state
4 and local political campaigns and totaled \$3,000. The State of Illinois campaign finance
5 disclosure website reveals that the Bank made an additional \$7,300 in contributions to state and
6 local political campaigns from 1997 through 2006, and the Commission's website reveals that
7 the Bank made a federal political contribution in 1999 in the amount of \$300. As of January 1,
8 2008, \$3,950 is not time-barred.

9 Thus, we believe that Seaway National Bank violated 2 U.S.C. § 441b(a) by making
10 political contributions. We recommend, however, given the low dollar amount that is not time-
11 barred by the statute of limitations, that the Commission open a MUR and dismiss with
12 admonishment.¹

13 **B. Seaway Bancshares, Inc.**

14 Seaway Bancshares, Inc. is a single-bank holding company incorporated in Delaware.
15 From September 1994 through June 20, 2007 (the date of its last contribution), the holding
16 company appears to have made \$113,925 in contributions to state and local political campaigns
17 in Illinois. About \$68,000 in contributions is still within the statute of limitations. The holding
18 company does not appear to have made any federal political contributions.

¹ _____ was unable to conclude the exact number and amounts of contributions made by the Bank because "Seaway" is listed in different ways in the State of Illinois campaign finance database. *i.e.*, sometimes "Seaway Bank" and other times "Seaway National Bank," and a search for "Seaway" does not retrieve all of the possible variations on the Bank's name.

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1 Illinois law permits corporations to make contributions to state and local campaigns, and
2 the Act and Commission regulations do not explicitly prohibit state and local contributions by
3 one-bank holding companies. In Advisory Opinion 1981-61, the Commission stated, however,
4 that a one-bank holding company could make state and local political contributions "provided
5 that the funds used by the parent holding company to make the contributions were not funds
6 which resulted from the operation of the federally chartered corporation." It appears that the
7 Commission was concerned that national bank funds would be used to make political
8 contributions through the structure of a one-bank holding company, in contravention of the
9 prohibition on political contributions by a national bank.

10 Seaway Bancshares claims it had no knowledge of the advisory opinion. Nevertheless,
11 the respondent describes two non-bank-operations transactions that appear to have resulted in
12 enough funds to cover the political contributions. In 2001, the holding company sold property
13 that it bought from the FDIC in the mid-80s to the Bank, and recorded a profit of almost
14 \$150,000. The sales price was based on current market values. In 2006, the holding company
15 invested \$186,000 in a purchase of stock. Although the purchase was related to a \$6 million
16 investment in the Bank, the holding company retained the \$185,000. The holding company
17 argues that both transactions assured that the holding company had non-bank operations assets
18 with which to make political contributions.

Thus, the holding company appears to have had non-bank funds with which to make political contributions.² Therefore, we recommend that the Commission open a MUR and dismiss with admonishment.³

III. RECOMMENDATIONS

1. Open a MUR.
2. Dismiss this matter with admonishment.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letter.
5. Close the file.

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02/11/08
Date

BY:


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² See AO 1995-31 (San Diego Host Committee) (permitting presidential convention host committee to accept contributions from bank holding companies provided that the funds were not derived from banks and that these entities could demonstrate that their revenues were sufficiently large to make these donations from non-bank income); AO 1995-32 (Chicago's Committee for '96) (same).

³ By simultaneously opening a MUR and dismissing with admonishment, documents from this case will go on the public record. See MUR 5899 (New York Bankers Association). In this way, the Commission will be able to provide guidance to the regulated community on an issue last addressed by the Commission more than a decade ago in two advisory opinions and which does not appear to have been the subject of any enforcement matters.